

§ 87(2)(g)

## C.C.R.B CASE CLOSING FORM

Investigator assigned: Bernbaum		Team: 6	CCRB#: 9702500	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourtesy <input checked="" type="checkbox"/> Abuse <input checked="" type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Date of incident: 5/28/97	Time of incident: 8:30 PM	Location of incident: § 87(2)(b)	Pct. of occurrence: 88	Date S.O.L. Expires: 11/28/98
Date reported: 7/10/97	Time reported: 10:14 AM	To whom/where/how reported: complaint made by mail		
Complainant: § 87(2)(b)		Home address: § 87(2)(b)		
Victim(s): § 87(2)(b)		Home address: same as above same		
Witness(es):		Home address:		
Subject officer(s) (include rank): PO Simone Harvard § 87(2)(g) PO Frank Tarantola § 87(2)(g)		Shield: 08620 11918	Tax: 915871 905151	Command: 88/MNND 88
Witness officer(s) (include rank): PO Carlton McKenney Lt. Richard Helenek PO Brian Caputo PO Milton Solares PO John Sullivan PO Gary Putterman Lt. John Layman		Shield: 29305 31383 23688 2125 22643	Tax: 915141 880499 915407 881440 899883 899731 861312	Command: 88 CPP 88 88 88 88 BNN

Allegation(s) by letter:	Recommendation(s):
<p>A.) PO Harvard was discourteous to § 87(2)(b) in violation of PG 104-01</p> <p>B.) PO Harvard used offensive language when he said, "Now who's the Black Oreo cookie?", in violation of PG 104-01</p> <p>C.) PO Harvard used excessive force when he knocked § 87(2)(b) into boxes, chipping her tooth and bruising her forehead, in violation of PG 104-01.</p> <p>D.) PO Tarantola used excessive force when he pepper sprayed § 87(2)(b) in violation of PG 104-01</p> <p>E.) PO Harvard abused his authority when he denied § 87(2)(b) use of the bathroom, in violation of PG</p> <p>F.) PO Harvard abused his authority by denying § 87(2)(b) medical treatment, in violation of PG</p>	<p>§ 87(2)(g)</p>

### Summary of Complaint

Around the time of the incident, the complainant, § 87(2)(b) had been involved in a long-running dispute with her landlord and her landlord's lover, § 87(2)(b). She believed that they were trying to illegally evict her because they had shut off her water, removed the sinks and toilets, and thrown her belongings all over her apartment. On May 28, 1998, § 87(2)(b) called the police two times in reference to her dispute with her landlord. The first time she called the police, her landlord could not be found, so she was told to call again when he was in the building.

Later in the day, when her lights began flashing on and off, § 87(2)(b) called the police again. This time two different officers, PO Harvard and PO McKenney, responded. § 87(2)(b) said that when the officers arrived, they started talking to § 87(2)(b) who lives across the hall from her. § 87(2)(b) was blaming § 87(2)(b) for the electricity problems. When § 87(2)(b) tried to explain that she was the one who called the police regarding the power flickering on and off, PO Harvard rudely told her to be quiet and just wait. PO McKenney then came to speak to § 87(2)(b) while PO Harvard talked to § 87(2)(b). § 87(2)(b) told him that she was not responsible for the electricity problems. PO Harvard then started playing with the circuit breaker and shut all the lights off. When § 87(2)(b) said that it wasn't nice to do that, PO Harvard told her to, "Shut up and get back inside" her apartment. § 87(2)(b) § 87(2)(b) daughter, told PO Harvard not to talk to her mother like that. § 87(2)(b) further explained what the landlord had done to her apartment, turning off the water, taking out the sinks, destroying the toilet, and trashing her house by throwing all of her belongings everywhere. PO McKenney told § 87(2)(b) to calm down, but PO Harvard started calling her names and cursing. When § 87(2)(b) again defended her mother, PO Harvard said, "You bitch, shut the fuck up and get inside." § 87(2)(b) told the officer not to speak to her child that way and PO McKenney tried to calm PO Harvard down. § 87(2)(b) told PO Harvard that she would be calm and respect him if he calmed down and respected her. PO Harvard said, "Shut the fuck up. You don't have any respect. I'm an officer." § 87(2)(b) said, "You don't have any respect, either. You came to control a situation. Not to make a situation." PO Harvard then threatened to arrest § 87(2)(b). When she asked on what grounds, he had no answer.

An officer in a white shirt, apparently a supervisor, arrived on the scene with two officers in uniform and two plainclothes officers. PO McKenney then asked § 87(2)(b) for her landlord's number so that they could contact him and ask him about what was going on. § 87(2)(b) walked into her apartment with PO McKenney and closed the door as PO Harvard approached it. PO Harvard then said, "Fuck that. I'm going to arrest her. I don't give a shit." He came into the apartment, placed § 87(2)(b) on the bed, and arrested her. § 87(2)(b) told the officer to leave her mother alone, started crying and going a little "crazy" by kicking and screaming. One of the backup officers, PO Tarantola, then pepper sprayed § 87(2)(b) in the face. By this time, all of the officers had come into the apartment.

An officer took § 87(2)(b) to the bathroom to wash the pepper spray off. As § 87(2)(b) was leaving the apartment, she asked to get some shoes. PO Harvard pushed her into some boxes that were on the floor, chipping her tooth and bruising her forehead. § 87(2)(b) told the officers that she couldn't see; everything was blurry. PO Harvard said, "Just shut up and get the fuck up."

In the patrol car, § 87(2)(b) asked PO McKenney to loosen her handcuffs, but PO Harvard told PO McKenney not to. § 87(2)(b) asked for medical attention, but never received any. At the precinct, § 87(2)(b) repeatedly asked to go to the bathroom but was denied. § 87(2)(b) began to cry. § 87(2)(b) said that she did not resist arrest, spit at PO Harvard, or bite him, as she was charged of doing. § 87(2)(b) was arrested § 87(2)(a) 160.50 (See arrest report, enc. #5) § 87(2)(a) 160.50. Her daughter, § 87(2)(b) was treated by EMS at the § 87(2)(b) house and then released into the care of her aunt, § 87(2)(b) sister.

### Results of Investigation

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) and her daughter § 87(2)(b) were both interviewed on 8/28/97 § 87(2)(g). Like her mother, § 87(2)(b) stated that an officer told her (§ 87(2)(b)) to “get her fucking ass inside”. § 87(2)(b) further stated that the officer then informed her mother that she (§ 87(2)(b)) was going to be arrested because she spit in the officer’s face. When § 87(2)(b) saw her mother being arrested, § 87(2)(b) became very upset and an officer pepper sprayed her. § 87(2)(b), § 87(2)(g) said that the subject officer said, “Now who’s the black Oreo cookie” to her mother, while § 87(2)(b) never mentioned this allegation (See § 87(2)(b) interview, enc. #4).

Efforts were next made to contact the § 87(2)(b) landlord, § 87(2)(b). § 87(2)(b) was sent a letter on 12/30/97. In addition, Investigator Bernbaum made a field trip to § 87(2)(b) on 12/30/97. She spoke to § 87(2)(b) who said he heard § 87(2)(b) cursing and yelling on 5/28/97, but did not witness any part of the incident. He agreed to give § 87(2)(b) a contact letter to see if she would give a statement about the incident. Letters were sent to § 87(2)(b) on 12/30/97, 1/12/98, and 3/12/98; however, § 87(2)(b) last name was not known when these letters were sent. § 87(2)(g). Additionally, when Investigator Bernbaum went on her field trip to the location where § 87(2)(b) lived, she was not at home.

PO Harvard was interviewed on 6/22/98. § 87(2)(g) he says that § 87(2)(b) was immediately confrontational, when the officers arrived. PO Harvard said that § 87(2)(b) confronted him in the hallway, cursing and saying, “Get the fuck out of here.” As he was investigating the problem with the electricity (which was reported during the 911 call), PO Harvard learned that § 87(2)(b) had the circuit breakers for the building in her home and had shut off the power in her upstairs neighbor’s apartment. § 87(2)(b) in fact according to the officer, informed PO Harvard that she had turned off the lights of a portion of the building because she was angry that her landlord had taken the sink out of her building. PO Harvard then turned the power back on in the building and left with his partner. However, as the officers were walking to their vehicle, § 87(2)(b) landlord appeared and told PO Harvard that § 87(2)(b) had turned off the power again. The officers then went back upstairs.

When PO Harvard got back upstairs, he said that he tried to enter § 87(2)(b)’s apartment; the door to which

had been left partially open. However, § 87(2)(b) slammed the door in his face. PO Harvard then asked to be let into the apartment. § 87(2)(b) finally opened the door and was cursing at the officers and proceeded to shove PO Harvard and his partner, PO McKinney. PO Harvard tried to restrain § 87(2)(b) so that she would not push, but as he did so, § 87(2)(b) spit in his face. PO Harvard then told § 87(2)(b) that she was under arrest. PO Harvard called for backup. § 87(2)(b) began to resist arrest by "flailing her arms". § 87(2)(b) then started hitting PO Harvard with an hanger. Backup officers pulled § 87(2)(b) out of the room. PO Harvard did not know that she was pepper sprayed. PO Harvard denied ever pushing § 87(2)(b) or knocking her down. He does not remember seeing any boxes in the apartment. PO Harvard denied being discourteous or using offensive language. He said that § 87(2)(b) never asked for her handcuffs to be loosened, for medical attention, or to use the bathroom while she was at the precinct. PO Harvard stated in his interview that if § 87(2)(b) had asked to use the bathroom while at the precinct, she would have been taken to the bathroom by a female officer.

PO McKinney was interviewed on 6/29/98. § 87(2)(g) § 87(2)(b) PO McKinney said that it was § 87(2)(b) not § 87(2)(b) who was responsible for the electricity problems, and that it was § 87(2)(b) apartment which held the power circuit within it. PO McKinney appeared very sympathetic to the § 87(2)(b) and said that § 87(2)(b) apartment had indeed been trashed and the sinks removed by the landlord. PO McKinney said that § 87(2)(b) was "venting" at the officers because she was so upset, but under the circumstances, he understood. PO McKinney was not specific about what things § 87(2)(b) was saying. PO McKinney tried to calm § 87(2)(b) down. The officers went into § 87(2)(b) apartment, restored the power to § 87(2)(b)'s apartment, and left.

The officers were called back to the scene by tenants in the building before they even made it into their RMP because the two women were fighting again. § 87(2)(b) had again shut off § 87(2)(b) power supply. PO Harvard called for backup and tried to calm down § 87(2)(b) while PO McKinney talked to § 87(2)(b) about getting in touch with the landlord. PO Harvard and § 87(2)(b) started to argue and "they were both saying words to each other", but PO McKinney does not know exactly what they said. PO McKinney then heard a loud noise, and turned towards it. PO Harvard said that § 87(2)(b) had spit and slammed the door in his face. PO McKinney did not actually see this take place. PO McKinney does remember PO Harvard saying something about arresting § 87(2)(b) but is not sure if he said, "Fuck that. I'm going to arrest her. I don't give a shit."

PO McKinney said that § 87(2)(b) did resist arrest. § 87(2)(b) became very upset, was crying and swinging wooden hangers around. PO McKinney was trying to calm her down, but he slipped on an item on the floor and fell. Backup officers then came and pepper sprayed § 87(2)(b). PO McKinney took § 87(2)(b) to wash the pepper spray out of her eyes and left the apartment. He said that he does not know if PO Harvard ever used excessive force while handling § 87(2)(b) because he was not there for most of the arrest. PO McKinney remembers that Lt. Layden was one of the backup officers on the scene.

At the precinct, PO McKinney tried to comfort § 87(2)(b) by saying, "It wasn't right, but it's not my call, it wasn't my arrest. I know this has gotten out of hand. I know you're very upset that your apartment was trashed, but you can't really take it out on the cops. I don't know what was said between you (and PO Harvard). It's an unfortunate incident that happened." PO McKinney then added that he does not have any say in the arrests his partner makes.

When asked if § 87(2)(b) requested to have her handcuffs loosened and PO Harvard refused her, PO McKinney said, "I think, I think he told me not to loosen them, that § 87(2)(b) was his prisoner, so when someone has a prisoner, it's out of my hands."

PO McKinney does not remember § 87(2)(b) asking for medical treatment, having a chipped tooth, or a bruised forehead. He said that if she had asked, "Whether she's my prisoner or not...I'll go to the desk and say that a prisoner needs a bus and I'll call; I don't care what anybody says."

PO Caputo and PO Tarantola were interviewed on 8/6/98. They responded to PO Harvard's 10-85. Both officers remember seeing Lt. Layden on the scene. Both officers said that § 87(2)(b) was resisting arrest and that § 87(2)(b) was out of control. PO Tarantola admitted to using pepper spray to subdue § 87(2)(b) because he believed any

other tactic had more risk of physically harming § 87(2)(b) PO Caputo did see PO McKenney help wash § 87(2)(b) eyes out. Both officers remember an ambulance being outside the building and an EMT rinsing § 87(2)(b) eyes out with saline solution. Neither officer is sure what everyone was saying because there was a lot of screaming and they did not see any injuries on § 87(2)(b)

§ 87(2)(g)

PO Solares, Lt. Layden's operator, said that because the Lt. often verifies arrests on his own, it is possible that he responded to the scene.

Lt. Layden denies ever having been at the scene of the incident despite the fact that PO McKenney, PO Caputo, and PO Tarantola specifically remember seeing him at the scene. The radio run for the incident also lists Lt. Layden as responding to the scene. According to his memo book, Lt. Layden was on meal around the time of the incident (See memo book, enc. #15).

### Conclusions and Recommendations

§ 87(2)(b), § 87(2)(g)

PO Tarantola and PO Caputo were the backup officers in this incident. § 87(2)(g)

PO Tarantola also admitted to macing § 87(2)(b) and explained why he felt it was the proper course of action.

### **Allegation A: PO Harvard was discourteous to § 87(2)(b)**

When asked if PO Harvard was ever discourteous to § 87(2)(b) PO McKenney said, "When they were arguing with each other they were both screaming at each other, so I couldn't distinguish what they were saying. I know they were saying something but I can't really tell you, exactly word for word, what was said. They were both saying words at each other." PO Caputo and PO Tarantola answered this question in a similar fashion. They claimed that they were not sure if PO Harvard was discourteous because of all the screaming going on.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation B:** PO Harvard used offensive language when he said, “Now who’s the Black Oreo cookie?” to § 87(2)(b)

§ 87(2)(b)  
§ 87(2)(g)

**Allegation C:** PO Harvard used excessive force by pushing § 87(2)(b) into boxes after she was cuffed.

§ 87(2)(g)

**Allegation D:** PO Tarantola used excessive force when he pepper sprayed § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) Officers say that § 87(2)(b) was striking officers, including hitting PO Harvard with a hanger when the officer was trying to cuff § 87(2)(b) PO Tarantola said that he tried to calm § 87(2)(b) verbally, but that when that failed he decided to use his pepper spray because he felt it was the safest option. § 87(2)(b), § 87(2)(g)

Interim Order of 1994 states that pepper spray may be used when “a member reasonably believes it is necessary to effect and arrest of a resisting suspect, for self-defense or defense of another from unlawful force.” § 87(2)(g)

However, the Interim Order also states that pepper spray should not be used on “the elderly, young children, pregnant women, or persons with known respiratory conditions”. § 87(2)(g)

**Allegations E: That PO Harvard abused his authority by refusing to allow § 87(2)(b) to go to the bathroom.**

This allegation, the denial of bathroom use took place at the precinct. The only two witnesses for these incidents are PO Harvard and § 87(2)(b). Both PO Harvard and PO McKenney, his partner, deny that § 87(2)(b) was not allowed to use the bathroom. § 87(2)(g)

**Allegation F: § 87(2)(b) was denied medical treatment.**

All of the officers involved in this incident do not remember hearing § 87(2)(b) ask for medical treatment. PO Tarantola remembers § 87(2)(b) being with § 87(2)(b) at the ambulance which arrived at the scene, but the officer did not remember if § 87(2)(b) asked for medical treatment. PO McKenney adamantly insisted that if she had asked him for medical treatment, she would have received it. § 87(2)(g)

II

Investigator:	<u>Bernbaum</u>	Date:	<u>8/21/98</u>
Supervisor:	<u>[Signature]</u>	Date:	<u>8/26/98</u>
Reviewed by:	<u>[Signature]</u>	Date:	<u>8/26/98</u>
Reviewed by:		Date:	